

February 16, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services To Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems - ET Docket No. 00-258*

NOTICE OF ORAL EX PARTE COMMUNICATIONS

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to advise that yesterday, Joel Brick of Sioux Valley Wireless, Thomas Knippen of W.A.T.C.H. TV Company and the undersigned, counsel to the Wireless Communications Association International, Inc. ("WCA"), met separately with Commission Michael J. Copps and John Giusti, his Legal Advisor, with Commission Jonathan S. Adelstein and Barry Ohlson, his Senior Legal Advisor, with Commissioner Deborah Taylor Tate and Aaron Goldberger, her Legal Advisor, and with Fred Campbell, Legal Advisor to Chairman Martin. The purpose of those meetings was to discuss the issues raised in the *Fifth Notice of Proposed Rulemaking* in this proceeding regarding the relocation of licensees on Broadband Radio Service ("BRS") channels 1 and 2 from the 2150-2162 MHz band to create auctionable spectrum for Advanced Wireless Services ("AWS").

During the course of the meetings, WCA, Sioux Valley Wireless and W.A.T.C.H. TV Company reiterated the proposals they advanced in their formal filings in response to the *Fifth Notice of Proposed Rulemaking* and the concerns they express in those filings regarding positions being advanced by AWS interests. In particular, they stressed the need for the Commission to adopt rules and policies that permit BRS channel 1 and 2 operations to continue meeting the growing demand for broadband services pending relocation, and to assure that at the conclusion of the relocation process, BRS system operators are made whole. The attached presentation, summarizing WCA's primary positions (which have been endorsed by Sioux Valley Wireless and by W.A.T.C.H. TV Company) was distributed at each meeting.

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Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being filed with the office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel for the Wireless Communications
Association International, Inc.

Attachment

cc: Fred Campbell
Barry Ohlson
John Giusti
Aaron Goldberger



**The Relocation Of BRS
Channels 1 and 2:
Assuring That BRS
System Operators Are
Treated Fairly**

ET Docket No. 00-258

February 15, 2006

Background of BRS 1/2



- BRS 1/2 are being relocated to accommodate designation of 2110-2155 MHz for downstream AWS and reallocation of 2155-2170 for undetermined new uses
- BRS 1 and/or 2 is used in 30-50 markets, generally for the provision of upstream communications as part of a broadband offering in accordance with Commission's prior vision for the band
 - Installed technology provides high-speed capability comparable to that of cable modem and DSL
 - Some legacy use of BRS 1/2 for downstream distribution of analog video programming remains
- June 2004 Report and Order in WT Docket No. 03-66 designated specific replacement spectrum at 2.5 GHz

BRS Cannot Stagnate Pending Relocation



- Pending relocation, BRS system operators must be permitted to add subscribers and make system modifications necessary to accommodate growth
 - Many BRS systems serve rural areas where potential subscribers lack alternative sources of broadband
 - BRS systems have defined service areas. Thus, AWS can readily predict where its new operations may suffer interference from a growing BRS subscriber base and can relocate BRS systems beforehand if subscriber growth raises potential interference risk
 - AWS can control increased costs by relocating BRS sooner rather than later

Relocation Triggers



- WCA and CTIA agree that involuntary BRS relocation should be required before any AWS base station is deployed that would have line-of-sight to a BRS base station if no agreement is reached during 3 year mandatory negotiation period
- WCA and CTIA also agree that AWS should be permitted to involuntarily relocate BRS at any earlier time, in its discretion if no agreement can be reached
- BRS should be permitted to self-relocate via initiation of involuntary relocation process
- In any event, BRS should be relocated within 10, or perhaps 15, years

BRS Must Control Deployment



- “Turn key” approach of *Microwave Relocation* rules cannot apply to consumer-based, point-to-multipoint service like BRS
- WCA and CTIA agree that because of sensitive nature of BRS subscriber information, BRS operator must be responsible for implementing relocation
- Delays can be controlled by requiring BRS to complete process within 24 months of receipt of payment from AWS of estimated costs of migration

BRS Must Be Made Whole



- Absent agreement, AWS auction winners must pay all costs of relocating BRS 1/2 to comparable facilities in designated replacement spectrum
 - Comparable facilities must provide same coverage, throughput, reliability and operating costs
 - Reimbursable costs must include internal costs, calculated per 800 MHz TA guidelines
 - Costs for relocating BRS 1 must include costs of relocating BAS channel A10 from 2496-2500 MHz band designated for BRS 1 relocation
- BRS licensees cannot reasonably estimate relocation costs 10-15 years in the future, and, consistent with a policy of making BRS whole, cannot be bound to recover only 110% of any estimate

WCA Proposed Funding Process



- As with 800 MHz transition, AWS auction winner should advance estimated costs, subject to true up process
 - BRS provides estimate of costs of migrating to comparable facilities directly to appropriate AWS licensee.
 - AWS licensee has 30 days to: (1) send BRS the funds; or (2) ask BRS for clarification of or revisions to those portions of the estimate with which it does not agree. If (2), BRS must respond within 10 business days, and AWS has 10 business days to send the funds requested, or take the matter to the Commission for resolution.
 - Within 90 days of completion, BRS notifies AWS and provides a true up accounting, subject to verification process

No “Sunset” Is Appropriate Here



- A “sunset” of the obligation of AWS to fund relocation is inconsistent with objective of making BRS “whole”
- Given that AWS has a 15 year substantial service deadline, and may satisfy that deadline without constructing facilities near rural BRS systems, there is no assurance that BRS 1/2 operations will be relocated within 10, or even 15, years
- Requiring AWS to fund mandatory BRS relocation within 10 years regardless of AWS deployment will provide certainty to BRS systems and will not impose material financial constraint on AWS